



STATE OF CALIFORNIA

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1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-6593

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March 17, 1989

Dear ,

This is in response to your letter dated February 13, 1989, in which you ask us to review a series of proposed transactions for change in ownership implications. The facts as set forth in your letter, and as verbally represented to me by telephone, can be summarized as follows:

1. Amrealco, a California general partnership ("Amrealco") is composed of three individuals holding respective partnership interests therein of 70 percent, 20 percent and 10 percent.
2. Amrealco owns a 60.7 percent limited partnership interest in The Oakbrook Company, a California limited partnership ("Oakbrook"). The 20 percent Amrealco partner directly owns a 3.22 percent interest in Oakbrook, and the 70 percent Amrealco partner directly owns a 1 percent interest in Oakbrook. Except as set forth herein, none of the Amrealco partners own, either directly or indirectly, any interest in the Oakbrook partnership.
3. Oakbrook owns real property in the State of California, including that certain real property in Santa Clara County, which is the subject of your letter.
4. For business purposes, Amrealco plans to liquidate and distribute its assets, including the 60.7 percent limited partnership interest in Oakbrook, to its partners on a pro rata basis in accordance with their respective percentage partnership interests in Amrealco.
5. As a result, Amrealco's 60.7 percent limited partnership interest in Oakbrook will be transferred

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March 17, 1989

to, and assigned and allocated among, the Amrealco partners in the same percentages as such partners' respective partnership interests in Amrealco (i.e., 70, 20 and 10 percent).

You have expressed an opinion that these transfers will be excluded from the change of ownership provisions set forth in section 64 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) since the distributions to the Amrealco partners are to be in proportion to their ownership interests in Amrealco.

ANALYSIS

Section 64 provides in pertinent part as follows:

(a) Except as provided in subdivision (h) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as . . . partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

* * *

(c) When a corporation, partnership, other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interests in other legal entities, such purchase or transfer of such stock or other interest shall be a change of ownership of property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

Pursuant to rule 462(j)(4)(A) of the Property Tax Rules of Title 18 of the California Code of Regulations, obtaining a majority ownership interest in a partnership within the meaning of section 64(c) is effected by obtaining direct or indirect ownership or control of more than 50 percent of the total interest in both partnership capital and profits.

Subdivision (h) of section 61 deals with the stock of cooperative housing corporations and is inapplicable here. Subdivision (c) of section 64 would also seem to be inapplicable. The partner with the 70 percent interest holds the largest percentage interest in Amrealco. On the liquidation of Amrealco, such partner will be assigned a 42.49

March 17, 1989

percent partnership interest in Oakbrook as .70 times .607 equals .4249.

Since such partner otherwise holds only a 1 percent interest in Oakbrook, his receipt of the additional 42.49 percent interest will not constitute the obtaining of a majority ownership interest therein within the meaning of section 64(c) or rule 462(j)(4)(A). Therefore, it would seem that the general rule of section 64 would apply wherein the transfer of the partnership interests is not deemed to constitute a transfer of the partnership's real property.

However, subdivision (d) of said section 64 sets forth the following exception:

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

Pursuant to the above, if Amrealco held its 60.7 percent ownership interest in Oakbrook as an "original coowner" within the meaning of section 64(d), then the transfer by Amrealco of such partnership interest would, absent the application of an applicable exclusion, constitute a change in ownership of some or all of Oakbrook's real property.

In this instance, however, even if Amrealco were such an "original coowner," the exclusionary provisions of section 62 would apply as you have indicated. Said section 62 provides in pertinent part as follows:

Change in ownership shall not include:

March 17, 1989

* * *

(a)(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. . . .

In your letter, you indicate that the Amrealco partners will receive distributions of the Oakbrook partnership interests in proportion to their ownership of Amrealco. This being the case, any change in ownership which otherwise might be held to occur would be excluded pursuant to the above-cited exclusion set forth in section 62(a)(2).

As previously indicated, the views expressed in this letter are advisory only and are not binding upon the assessor of any county.

Very truly yours,



Robert W. Lambert
Tax Counsel

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cc: